

Mayer, Antonellis, Jachowicz & Haranas, LLP

Attorneys at Law

288 Main Street, Milford, MA 01757
Tel. (508) 473-2203 Telecopier (508) 473-4041

William H. Mayer
Robert P. Jachowicz
Joseph M. Antonellis
Peter J. Haranas
Jill P. Dawczyk
Erin Wright (also admitted in R.I.)
A. Eli Leino (also admitted in N.H.)

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2020 FEB 20 AM 11:13

To: Town of Grafton Zoning Board of Appeals
From: A. Eli Leino
Date: February 13, 2020
Regarding: Addendum to ZBA Variance Application dated January 31, 2020
David K. Muradian – 165 Worcester Street Property

The lot now known as 165 Worcester Street, Grafton, Massachusetts was created Approval Not Required through the existing structures exemption of M.G.L. c. 41 § 81L, which allows property containing multiple buildings to be divided. A plan of land recorded at the Worcester Registry of Deeds on August 27, 1979 in Plan Book 467, Plan 15, shows how an existing parcel featuring a house, barn, and commercial garage was divided into two parcels. The resulting parcel for which variance relief is now sought contains 13,961 square feet of land and 89 feet of frontage, and formerly housed the garage until it was demolished.

The parcel is zoned R-20, Medium Density Residential. Lots in this zone require 20,000 square feet of area, 125 linear feet of frontage, and have set back requirements of 30 feet for the front yard and 15 feet for the side and rear yards. The Applicant's submitted plan meets all setback requirements of the zoning by-laws, but relief is requested from the area regulation (6039 feet under the requirement) and frontage requirement (36 feet short of the by-law standard).

Despite being created in 1979 (prior to the 1986 adoption of the current Grafton Zoning By-Law), due to its creation under § 81L the lot lacks any grandfathering protection. In 2015, the Supreme Judicial Court issued a ruling in Palitz vs. Zoning Board of Appeals of Tisbury, 470 Mass. 795 (2015), clarifying the grandfather status for lots created in this manner. In Palitz, the court held that existing structures on lots created by § 81L division maintained grandfathered protections, but that new nonconformities arising on the new lot must be authorized by a variance. Following the court's guidance on what constitutes a new nonconformity, this application to build a new building on the site clearly qualifies as such, and under Palitz therefore requires variance relief.

Also requiring this Board's consideration, the 1979 ANR endorsement was granted with a condition, printed on the recorded plan, stating "No determination of compliance with the

zoning requirement has been made or is intended by this endorsement. Neither Parcel 1 or 2 is to be considered a buildable lot.” It is the Applicant’s position that this condition is entirely compatible with the Supreme Judicial Court’s interpretation of landowner rights under § 81L. Without the herein requested variance relief, it is understood that this is not a buildable lot under Massachusetts law. Receipt of a variance would make the lot buildable under the Palitz framework and would similarly cure the condition issued by the Planning Board in 1979. (See Palitz at 798-99, “ANR endorsement did not establish zoning compliance and, as a result, [the property] was not rendered lawful for zoning purposes by the grandfather protection afforded by [M.G.L. c. 40A § 6]. Rather, [the property] was rendered lawful by the variance.)

Per §6.5.4. of the zoning by-laws, to grant a variance, this Board must find that strict enforcement of the by-laws would create a substantial hardship owing to unique circumstances relating to the soil conditions, shape or topography of the lot or building thereon, and that relief may be granted without substantial detriment to the public good or by substantially derogating from the intent or purpose of the by-law. At 165 Worcester Street, the lot was created through a lessor-used provision of Commonwealth law, and resulted in a lot where the size (shape) did not meet future zoning requirements but also lacks grandfathering protections. Without the grant of variances for area and frontage, this lot will be entirely unusable for residential development, which would be a substantial hardship.

The purpose of the R-20 zone (By-Laws §3.5.1.3) is to provide “sites for medium density residential development with respect to the existing character of the neighboring homes and properties, including compatible, related home-oriented activities and pursuits in a small village environment.” Allowing the Applicant to construct a residential use in this residential zone conforms completely with the intent of the by-laws. With regard to the public good, this project would revitalize a blighted lot by constructing a building in keeping with the existing uses and aesthetics of the neighborhood, create minimal traffic, and add to the town’s housing stock.